THE BOMBAY SALES OF MOTOR SPIRIT TAXATION ACT, 1946.

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*BOMBAY ACT No. VI OF 1946.[1]

[THE BOMBAY SALES OF MOTOR SPIRIT TAXATION ACT, 1946.]

[*8th March 1946*]

Amended by Bom. 9 of 1948.
Adapted and modified by the Adaptation of Laws Order, 1950.
Amended by Bom. 50 of 1950.
,, ,, ,, 13 of 1952.

An Act to provide for the levy of a tax on the sales of motor spirit in the Province of Bombay.

WHEREAS it is expedient to provide for the levy of a tax on the sales of motor spirit in the Province of Bombay ;

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act, in the Provincial Legislature ;

26 Geo. 5, Ch. 2.

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act :

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Sales of Motor Spirit Taxation Act, 1946.

(*2*) It shall extend to the whole of the [2][State] of Bombay.

(*3*) This section shall come into force at once and the rest of this Act shall come into force on such date as the [3][State] Government may, by notification in the *Official Gazette*, appoint.

Definitions.

2. In this Act unless there is anything repugnant in the subject or context,—

Bom. V of 1946.

[4][(*A-1*) "Collector" means the Collector of Sales Tax appointed under the Bombay Sales Tax Act, 1946] ;

(*1*) "consumer" means a person who purchases motor spirit for the purpose of consumption and not for resale ;

(*2*) "importer" means a person who carries on the trade of importing motor spirit into the [2][State] of Bombay ;

(*3*) "licence" means a licence granted or renewed under this Act ;

[5][(*4*) "manufacturer" includes a trader preparing any kind of motor spirit by admixture of one or more kinds of motor spirits with or without other petroleum products or alcohol ;

(*4A*) "motor spirit" means—

(*a*) any inflammable hydro-carbon (including any mixture of hydro-carbons or any liquid containing hydro-carbons) which is capable of being used for providing reasonably efficient motive power for any form of motor vehicle ; and

(*b*) power alcohol, that is, ethyl alcohol of any grade (including such alcohol when denatured or otherwise treated), which either by itself or in admixture with any such hydro-carbon, is capable of being used as aforesaid ;

but does not include diesel oil or any other form of inflammable hydro-carbon material which the State Government may by notification in the *Official Gazette* specify in this behalf] ;

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* This Act was repealed and re-enacted by Bom. 9 of 1948, s. 2.
[1] For the Statement, *see Bombay Government Gazette*, 1946, Pt. IV, p. 106.
[2] This word was substituted for the word "Province" by the Adaptation of Laws Order, 1950.
[3] This word was substituted for the word "Provincial" *ibid.*
[4] Clause (*A-1*) was inserted by Bom. 50 of 1950, s. 2 (*1*).
[5] Clauses (*4*) and (*4-A*) were substituted for clause (*4*), *ibid*, s. 2 (*2*).

(5) " Prescribed " means prescribed by rules made under this Act ;

(6) " retail sale " means a sale of motor spirit for the purpose of consumption by the person by whom or on whose behalf it is or may be purchased ;

(7) " retail trader " means a trader who sells motor spirit for the purpose of consumption by the person by whom on or whose behalf it is or may be purchased ;

(8) " trader " means a person who carries on the business of buying or selling motor spirit for the purpose of gain or profit and includes—

(a) a manufacturer, or

(b) an importer,

who carries on such business, and

(c) a broker or commission agent working in connection with such business.

The words " trade " or " trading " shall be construed accordingly.

[1][(9) " wholesale trader " means a trader whose sales of motor spirit includes any sales other than retail sales.]

Levy of tax.

3. (1) There shall be levied and collected a tax on the sale of motor spirit at such stage between its manufacture or import, as the case may be, and its consumption, as may be prescribed :

Provided that such tax shall not be levied on its sale at more than one such stage.

[2] * * * *

(2) Subject to the provisions of section 4, the tax under sub-section (1) shall be levied by the Collector at the prescribed time, in the prescribed manner and [3][at such rate or rates as may be prescribed in respect of different kinds of motor spirits not exceeding [4][18 ¾ per cent.] on the value of sales of such motor spirits].

(3) If any tax payable under sub-section (1) is not paid within the prescribed time, the Collector may in lieu thereof, recover any sum not exceeding double the amount of the tax so unpaid or any smaller sum above the amount of the tax which the Collector may think it reasonable to recover.

Assessment of tax.

4. (1) In cases where accounts are kept and maintained and statements submitted in the manner and at the period prescribed under section 10, the tax leviable under section 3 shall be assessed by the Collector on the value of sales as disclosed in such accounts and statements.

(2) In cases where no such accounts are kept and maintained or where no such statements are submitted, or where such accounts or statements are in the opinion of the Collector false or incorrect, the Collector shall make the assessment to the best of his judgment.

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[1] Clause (9) was substituted for the original by Bom. 50 of 1950, s. 2 (2).

[2] Proviso was deleted, *ibid*, s. 3.

[3] This portion was substituted for the portion " at a prescribed rate not exceeding 12½ per cent. on the value of the sale of motor spirit ", *ibid*.

[4] These figures and words were substituted for the figures and words " 12½ per cent. " by Bom. 13 of 1952, s. 2.

Government may grant refund of tax in certain cases.

5. Where motor spirit on the sale of which to a wholesale trader the tax is levied and collected under section 3, is exported outside the [1][State] of Bombay, the wholesale trader concerned shall, subject to such conditions as may be prescribed and upon an application made in this behalf, be entitled to a refund of the tax levied and collected in respect of such motor spirit.

Utilization of proceeds of tax.

[2][**5A.** (*1*) The proceeds of the tax and penalties other than fine recovered under this Act shall first be credited to the Consolidated Fund of the State.

(*2*) After deducting from the said proceeds, such sum not exceeding 50 per cent. of the said proceeds, as the State Government may determine in this behalf, the remaining amount shall be entered in and transferred to the State Road Fund referred to in sub-section (*3*) of section 9 of the Bombay Motor Vehicles Tax Act, 1935, and shall, subject to the provisions of the said sub-section (*3*), be expended in the manner and for the purpose stated in the said sub-section (*3*).

Bom. XXXIV of 1935.

(*3*) The amount transferred to the State Road Fund under sub-section (*2*) shall be charged on the Consolidated Fund of the State.]

Trader to take out licence.

6. (*1*) Every trader carrying on business in the sale or purchase of motor spirit shall obtain a licence from the Collector for carrying on such trade.

(*2*) Where a trader has more than one shop or place of business whether in the same town or village or in different towns or villages, he shall obtain a separate licence in respect of each shop or place of business.

(*3*) Notwithstanding anything contained in this section, a hawker shall be liable to obtain one licence, whatever may be the area of his operation.

(*4*) Every trader shall get his licence renewed before the date on which it expires.

Bom. V of 1939.

(*5*) A licence granted or renewed under the Bombay Sales Tax Act, 1939, shall be deemed to be licence granted or renewed under this Act.

Expiry and renewal of licence.

7. (*1*) Every licence shall be in such form and subject to such conditions as may be prescribed and shall expire on the last day of the year for which it was granted but may be renewed from year to year :

Provided that in case of any licence given to a manufacturer or importer the conditions of such licence may provide that the holder of the licence shall not sell motor spirit except to a wholesale trader or a consumer.

(*2*) The Collector may impose for the grant or renewal of every licence such fee not exceeding Rs. 2 as may be prescribed.

Explanation.—In this section " year " means the financial year.

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[1] This word was substituted for the word " Province " by the Adaptation of Laws Order, 1950.
[2] Section 5A was inserted by Bom. 13 of 1952, s. 3.

No trader to carry on business without licence.

8. No trader shall carry on business in the sale or purchase of motor spirit without holding a licence under section 6.

Penalty for contravention of section 8.

9. Whoever contravenes the provisions of section 8 shall, on conviction, be [1][punished] with fine which may extend to two thousand rupees and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Traders and other persons to [4][keep accounts and submit statements].

10. [2][(*1*)] Every trader carrying on business in the sale or purchase of motor spirit shall keep and maintain accounts in the form prescribed of the value of motor spirit (manufactured or imported), sold or purchased by him and shall submit to the officer authorised in this behalf by the Collector statements in such form and at such period as may be prescribed.

[3][(*2*) Every trader required to furnish any statement under sub-section (*1*) shall, before the date by which such statement is submitted, pay into a Government treasury or the Reserve Bank of India on Government account the full amount of the tax stated in such statement to be due from him under this Act and shall furnish along with such statement a receipt from the treasury or Bank, as the case may be, showing the payment of such amount of the tax.]

Penalty for failure to keep accounts or submit returns.

11. If any trader liable under section 10 to keep accounts or to submit statements [5][fails, without sufficient cause, to keep or submit the same in the manner and at the period prescribed or keeps false accounts or submits false statements], he shall, on conviction, be [6][punished] with fine which may extend to [7][Rs. 1,000] and in the case of a continuing failure with an additional fine which may extend to Rs. 50 for every day during which such failure continues, after conviction for the first such failure.

Production and inspection of accounts and documents and search of premises.

[8][**12.** (*1*) The Collector may, for the purposes of this Act, at all reasonable times—

(*a*) require any person, to whom sub-section (*1*) of section 6 applies, to produce before him accounts, registers or other documents or to furnish any other information, or

(*b*) inspect the accounts, registers and other documents and the stocks of any motor spirit manufactured, stored or kept in any shop, warehouse or place of business of any such person, or

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[1] This word was substituted for the word "punishable" by Bom. 13 of 1952, s. 4.

[2] Section 10 was renumbered as sub-section (*1*) of that section, *ibid.*, s. 5 (*1*).

[3] Sub-section (*2*) was inserted, *ibid.*, s. 5 (*2*).

[4] These words were substituted for the words "keep and maintain accounts", *ibid.*, s. 5 (*3*).

[5] These words were substituted for the words "fails to keep or submit the same in the manner and at the period prescribed", *ibid*, s. 6 (*1*).

[6] This word was substituted for the word "punishable", *ibid.*, s. 6 (*2*).

[7] These letters and figures were substituted for the letters and figures "Rs. 500", *ibid*, s. 6 (*3*).

[8] Sections 12 and 12A were substituted for the original section 12, *ibid.*, s. 7.

(*c*) enter and search any building, vessel, vehicle or place in which he has reason to believe that any motor spirit is stored or kept for the purpose of sale or manufacture.

(*2*) If the Collector has reason to suspect that any person is attempting to commit an offence punishable under this Act, he may for reasons to be recorded in writing seize such accounts, registers or other documents of such person as may be necessary and shall grant a receipt for the same and retain the same only for so long as may be necessary for examination thereof or for a prosecution.

Penalty for failure to comply with requirements of section 12 or obstructing officer in discharge of duties.

12A. Whoever—

(*a*) fails to comply with any requirement made of him under sub-section (*1*) of section 12, or

(*b*) produces false accounts, registers or documents or knowingly furnishes false information, or

(*c*) obstructs any officer making an inspection, search or seizure under the said section, or

(*d*) aids or abets any person in the commission of any act specified in clause (*a*), (*b*) or (*c*) of this section—

shall, on conviction, be punished with fine which may extend to two thousand rupees and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.]

Suspension or cancellation of licence.

13. (*1*) Subject to such conditions as may be prescribed, the Collector may suspend or cancel a licence given under section 6—

(*a*) if any tax payable under section 3 is not duly paid by the holder of such licence ; or

(*b*) if there is any breach of any of the conditions subject to which the licence is granted ; or

(*c*) if the holder of such licence contravenes any of the provisions of this Act or the rules made thereunder.

(*2*) If the licence is suspended or cancelled for any reason, the licensee shall not be entitled to any compensation for such suspension or cancellation or to the refund of any fee paid in respect thereof.

Power of entry and search.

14. Any officer specially empowered by the [1][State] Government in this behalf may enter and search, at any time, by day, or by night any building, vessel, vehicle or place in which he has reason to believe that motor spirit is kept for the purposes of sale.

Searches how made.

V of 1898.

15. All searches made under section 14 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898.

[1] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

Power of investigation.

16. (*1*) Every officer not below such rank as may be prescribed shall, within the area for which he is appointed, have power to investigate all offences punishable under this Act.

(*2*) Every such officer shall, in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognizable offence. V of 1898.

Offences to be bailable.

17. All offences punishable under this Act shall be bailable.

Power to compound offences.

18. [1][(*1*) The Collector may accept from any person who has committed an offence punishable under this Act or the rules made thereunder by way of composition of such offence, such sum of money as the Collector may fix, which shall not exceed—

(*i*) a sum double the amount of the tax payable under section 3 in respect of any sales conducted by such person, or

(*ii*) two thousand rupees,

whichever is greater.]

(*2*) On the payment of such sum of money to the Collector the accused person shall be discharged, and no further proceedings shall be taken against such person in respect of such offence.

Jurisdiction to try offences.

19. No Magistrate, below the rank of a Presidency Magistrate or a Magistrate of the Second Class, shall try an offence under this Act.

Delegation of power by Collector.

20. Subject to the general or special orders of the [2][State] Government the Collector may delegate any of the powers conferred upon him by or under this Act [3][to any person appointed to assist him under section 3 of the Bombay Sales Tax Act, 1946, not below the rank of a Sales Tax Officer (Junior)]. Bom. V of 1946.

Officers to be public servants.

21. All officers acting under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Protection of persons acting in good faith and limitation of suits and prosecutions.

22. (*1*) No suit, prosecution or other legal proceedings shall be instituted against any officer of the [4][Government] for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(*2*) No suit shall be instituted against the [5][State] of Bombay and no prosecution or suit shall be instituted against any officer of the [4][Government] in respect of anything done or intended to be done, under this Act unless the suit or prosecution has been instituted within six months from the date of the act complained of.

Appeal and revision.

23. [6][(*1*) Within sixty days of the making of any order under this Act, other than an order made by the Collector any person aggrieved by such order may, in the prescribed manner, appeal to the prescribed authority against such order.]

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[1] This sub-section was substituted for the original by Bom. 13 of 1952, s. 8.

[2] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

[3] This portion was substituted for the words "to any officer not below the rank of a Mamlatdar or Mahalkari" by Bom. 50 of 1950, s. 4.

[4] This word was substituted for the word "Crown" by the Adaptation of Laws Order, 1950.

[5] This word was substituted for the word "Province", *ibid.*

[6] This sub-section was substituted for the original by Bom. 50 of 1950, s. 5.

(*2*) Every order passed in appeal under this section shall, subject to the powers of revision conferred by [1][sub-sections (*2A*) and (*3*)], be final.

[2][(*2A*) Subject to such rules as may be made in this behalf and for reasons to be recorded in writing, the Collector may, upon application or of his own motion, revise any order passed under this Act or the rules thereunder by a person to whom he has delegated any of his powers under section 20 :

Provided that—

(*a*) no application under this sub-section shall be entertained if it is not made within a period of four months from the date of the order ;

(*b*) before rejecting any application for the revision of any such order the Collector shall record reasons for such rejection ; and

(*c*) before any order is passed under this sub-section which is likely to affect any person adversely, such person shall be given a reasonable opportunity of being heard.]

(*3*) The [3][State] Government may, at any time, call for and examine the record of any order of, or the proceedings recorded by, any officer or person for the purpose of satisfying itself as to the legality or propriety of such order passed by, or as to the regularity of such proceedings of, such officer or person and may pass such order in reference thereto as it thinks fit.

24. The [3][State] Government may, by rules made in this behalf, exempt any class of traders from all or any of the provisions of this Act. **Power of Government to exempt certain traders from the Act.**

25. (*1*) The [3][State] Government may, for the purposes of carrying out the provisions of this Act, make rules. **Power to make rules.**

(*2*) In particular and without prejudice to the generality of the foregoing provision, the [3][State] Government may make rules for the following matters :—

(*a*) the stage at which, the rate [4][or rates] and the time at which and the manner in which the tax shall be levied and collected under section 3 ;

(*b*) the conditions subject to which a wholesale trader shall be entitled to refund under section 5 ;

(*c*) the form and conditions of the licence under section 7 and the fee for the grant or renewal thereof ;

(*d*) the form of accounts to be maintained, and of statements to be submitted and the periods at which such statements are to be submitted under section 10 ;

(*e*) the conditions subject to which a licence may be suspended or cancelled under section 13 ;

(*f*) the rank of officer empowered to investigate offences to be prescribed under section 16 ; [5]*

[6][(*fa*) the manner in which, and the authority to which, appeals against any order under this Act may be preferred under section 23 ;

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[1] These words, brackets and letter were substituted for the word, brackets and figure "sub-section (*3*)", by Bom. 50 of 1950, s. 5 (*2*).
[2] This sub-section was inserted, *ibid*, s. 5 (*3*).
[3] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
[4] These words were inserted by Bom. 50 of 1950, s. 6.
[5] The word "and" was deleted, *ibid*.
[6] Clauses (*fa*) and (*fb*) were inserted, *ibid*.

(*fb*) the procedure for, and other matters (including fees) incidental to, the disposal of appeals and applications for revision under section 23 ;]

(*g*) the conditions subject to which any class of traders shall be exempted from all or any of the provisions of this Act under section 24.

(*3*) Any rule made under this section may provide that any person contravening any such rule shall be liable on conviction [1][to be punished with a fine which may extend to Rs. 1,000 and in the case of a continuing contravention with an additional fine which may extend to Rs. 50 for every day during which such contravention continues after conviction for the first such contravention].

(*4*) Rules made under this section shall be subject to the condition of previous publication and shall be published in the *Official Gazette*.

Licence fee and other dues to be recoverable as arrears of land revenue.

26. All sums payable as taxes, fees or penalties under section 3 or 7 shall be recoverable as arrears of land revenue.

Transitional provisions.

27. Notwithstanding the repeal of the Bombay Sales Tax Act, 1939,— Bom. V of 1939.

(*a*) such repeal shall not affect the liability of any person to pay any sum due from him under the said Act or any right acquired or the validity or invalidity of anything already done thereunder ; and

(*b*) all proceedings commenced, officers empowered or authorised, all powers conferred, rules made and orders issued under any of the provisions of the Bombay Sales Tax Act, 1939, shall be continued, and, so far as may be, be deemed to have been respectively commenced, empowered or authorised, conferred, made or issued under this Act. Bom. V of 1939.

[1] This portion was substituted for the words and figures " to a fine which may extend to Rs. 50 " by Bom. 13 of 1952. s. 9.